

FILED
2013 SEP 12 P 4:13
LAUREN G. KELLY
LAKE CO. CLERK OF COURT

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

REBECCA OLIVO APONTE,
Individually and as Executor of The
Estate of MARYANNE DEPETRIS,
Deceased
8412 HallNorth Dr
Mentor, OH 44060

13CV002001
VINCENT A CULOTTA

And

RALPH DEPETRIS
30630 Ridge Road, Apt #34
Wickliffe, OH 44092

Plaintiffs,

vs.

OLD DOMINION TRUCK LEASING,
INC.
7511 White Pine Rd
Richmond, VA 23832

And

DOMINION DEDICATED
LOGISTICS, INC
7511 Whitepine Rd
Richmond, VA 23237

And

EASTERN SLEEP PRODUCTS
COMPANY
4901 Fitzhugh Avenue Suite 300
P.O.Box 6689
Richmond, VA 23230

And

SYMBOL MATTRESS
TRANSPORTATION, INC
C/O: Denise Hathaway

COMPLAINT

TYPE: PERSONAL INJURY,
WRONGFUL DEATH

(JURY DEMAND ENDORSED HEREON)

4901 Fitzhugh Avenue Suite 300)
P.O. Box 6689)
Richmond, VA 23230)
)
And)
)
ROBERT E. MCCHARGUE II)
19321 River Rd)
Chesterfield, VA 23838)
)
And)
)
JOHN DOE EMPLOYER #1- employer)
whose name and address could not be)
determined after reasonable due)
diligence)
)
Defendants.)

Now come Plaintiffs, REBECCA OLIVO APONTE, Individually and as Executor of the Estate of MARYANNE DEPETRIS, Deceased, and RALPH DEPETRIS, (hereinafter collectively at times reoffered to as "Plaintiffs") by and through undersigned counsel, and hereby allege the following against the Defendants:

PARTIES, JURISDICTION AND VENUE

1. This action arises from a pedestrian/motor vehicle accident which occurred on December 1, 2011 at approximately 10:30 a.m. in the parking lot outside the Bed, Bath and Beyond store located at 9700 Mentor Ave Painesville Township, Ohio.
2. Plaintiff REBECCA OLIVO APONTE currently resides at 8412 HallNorth Dr Mentor, OH 44060. REBECCA OLIVO APONTE is currently the duly authorized Executor of the Estate of MARYANNE DEPETRIS, deceased, pursuant to Letters of Authority issued by the

- Probate Court of Lake County, Ohio. (See Letters of Authority attached hereto as Exhibit "A.")
3. Plaintiff RALPH DEPETRIS currently resides at 30630 Ridge Road, Apt #34 Wickliffe, OH 44092.
 4. On December 1, 2011, at approximately 10:30 a.m., Defendant ROBERT MCCHARGUE was the operator of a 2011 Freightliner tractor and trailer, engaged in the course and scope of his employment with Defendants, OLD DOMINION TRUCK LEASING, INC. and/or DOMINION DEDICATED LOGISTICS, INC. and/ or EASTERN SLEEP PRODUCTS COMPANY and/or SYMBOL MATTRESS TRANSPORTATION, INC and/ or JOHN DOE EMPLOYER #1.
 5. Defendant JOHN DOE EMPLOYER #1, presently unidentified, will in no way be prejudiced in the maintenance of their defense on the merits within the meaning of Rule 15(d) of the Ohio Rules of Civil Procedure because of their constructive or actual notice of the institution of this case. Except for the inability of the Plaintiffs to discover the name of this Defendant, this action would be brought against them in their proper, true, and exact name and capacity, and said information will be provided by Plaintiffs when such information becomes fully known to them.
 6. Defendant ROBERT MCCHARGUE currently resides at 19321 River Rd, Chesterfield, Virginia 23838.
 7. Defendant OLD DOMINION TRUCK LEASING, INC. (hereinafter referred to as "OLD DOMINION"), is a North Carolina company with its principal place of business located on 7511 White Pine Rd, P.O. BOX 730, Chesterfield, Virginia 23832, currently conducting business in the State of Ohio. At all relevant times, Defendant OLD DOMINION owned or

leased the 2011 Freightliner and/or trailer being operated by Defendant ROBERT MCCHARGUE.

8. Defendant DOMINION DEDICATED LOGISTICS, INC (hereinafter referred to as "DOMINION"), is a company with its principal place of business located on 7511 White Pine Rd, P.O. BOX 730, Chesterfield, Virginia 23832, currently conducting business in the State of Ohio. At all relevant times, Defendant DOMINION owned or leased the 2011 Freightliner and/or trailer being operated by Defendant ROBERT MCCHARGUE.
9. Defendant EASTERN SLEEP PRODUCTS COMPANY (hereinafter referred to as "EASTERN SLEEP") is a Virginia company with its principal place of business on 4901 Fitzhugh Ave. Suite 300, P.O. BOX 6689, Richmond, Virginia 23230, currently conducting business in the State of Ohio. At all relevant times, Defendant EASTERN SLEEP owned or leased the 2011 Freightliner and/or trailer being operated by Defendant ROBERT MCCHARGUE.
10. Defendant SYMBOL MATTRESS TRANSPORTATION, INC (hereinafter referred to as "SYMBOL") is a Virginia company with its principle place of business on 4901 Fitzhugh Ave. Suite 300 P.O. BOX 6689, Richmond, Virginia 23230 currently conducting business in the State of Ohio. At all relevant times, Defendant SYMBOL owned or leased the 2011 Freightliner and/or trailer being operated by Defendant ROBERT MCCHARGUE.
11. Defendant OLD DOMINION TRUCK LEASING, INC. and/or DOMINION DEDICATED LOGISTICS, INC. and/ or EASTERN SLEEP PRODUCTS COMPANY and/or SYMBOL MATTRESS TRANSPORTATION, and/or JOHN DOE EMPLOYER #1, at all times was (or were) the employer(s) of Defendant ROBERT MCCHARGUE and/or responsible for his hiring, training, supervision, and retention as a tractor-trailer driver.

12. By virtue of the foregoing, venue and jurisdiction are proper with this Court.

FACTUAL ALLEGATIONS

13. Plaintiffs fully reallege all of the above paragraphs as though fully rewritten herein.

14. On December 1, 2012, MARYANNE DEPETRIS was a customer at the Bed, Bath and Beyond store located at 9700 Mentor Ave Painesville Township, Ohio. As she exited from the store, she approached the pedestrian crosswalk leading from the front of the store to the parking lot. Her husband, Plaintiff RALPH DEPETRIS, was sitting in his parked vehicle in the parking lot opposite the front door of the store.

15. At the above described time and place, Defendant ROBERT MCCHARGUE had just completed a delivery or deliveries at a store located in the same plaza as the Bed, Bath and Beyond store. In the minutes immediately preceding this incident, Defendant ROBERT MCCHARGUE was driving through the parking lot when he received a cell phone call. He stopped his tractor-trailer immediately in front of the Bed, Bath and Beyond store in order to answer the call. In doing so he positioned his tractor-trailer directly over the crosswalk, blocking pedestrian traffic to and from the store.

16. As MARYANNE DEPETRIS exited the Bed, Bath and Beyond store, she was confronted by the tractor-trailer operated by Defendant ROBERT MCCHARGUE, which completely blocked her path of travel and completely obstructed the pedestrian crosswalk.

17. Because Defendant ROBERT MCCHARGUE's tractor-trailer was completely blocking the crosswalk, MARYANNE DEPETRIS had no choice but to walk around the front of the stopped tractor-trailer in order to cross to the parking lot where her husband, Plaintiff RALPH DEPETRIS, waited in his car.

18. As MARYANNE DEPETRIS was walking in front of the tractor-trailer in order to cross to the parking lot, Defendant ROBERT MCCHARGUE suddenly and without warning negligently pulled forward. The front of the truck struck MARYANNE DEPETRIS, knocking her to the ground. The front tires of the truck drove over the top of MARYANNE DEPETRIS, causing severe, and ultimately fatal, physical injuries.
19. Plaintiff RALPH DEPETRIS observed the incident unfold, and came to his wife's aid after the accident. He observed her significant injuries and pain and suffering firsthand and as a result suffered emotionally. His mental distress was, and continues to be, severe and debilitating.
20. In operating his tractor-trailer that day, Defendant ROBERT MCCHARGUE caused severe and ultimately fatal injuries to MARYANNE DEPETRIS, who endured conscious pain and suffering, emotional distress, and damage to personal property.
21. MARYANNE DEPETRIS died as a result of the serious injuries sustained during the impact by the tractor-trailer.
22. Plaintiff REBECCA OLIVO APONTE is the duly appointed Executor of the Estate of MARYANNE DEPETRIS, as authorized by Probate Court of Lake County, Ohio Case No.: 12 ES 0051, and brings this action on behalf of the Estate and all beneficiaries.
23. As a result of the tractor/trailer accident on December 1, 2011 the Estate of MARYANNE DEPETRIS incurred medical, funeral and burial expenses.
24. As a result of witnessing the tractor/trailer accident on December 1, 2011 RALPH DEPETRIS endured severe and debilitating emotional distress, major depression and post-traumatic stress disorder.

Count I
(Negligence- Defendant ROBERT MCCHARGUE)

25. Plaintiffs fully reallege all of the above paragraphs as though fully rewritten herein.
26. Plaintiff REBECCA OLIVO APONTE brings this wrongful death action individually and as a personal representative for the exclusive benefit of the surviving kin.
27. On or about December 1, 2011 while operating a tractor-trailer in the parking lot outside of Bed, Bath and Beyond, Defendant ROBERT MCCHARGUE, believed to be in the course and scope of employment with Defendant Defendant OLD DOMINION TRUCK LEASING, INC. and/or DOMINION DEDICATED LOGISTICS, INC. and/ or EASTERN SLEEP PRODUCTS COMPANY and/or SYMBOL MATTRESS TRANSPORTATION, was negligent, thereby causing the truck to strike MARYANNE DEPETRIS, a pedestrian.
28. At all relevant times Defendant ROBERT MCCHARGUE owed a duty of care to the public and to MARYANNE DEPETRIS to safely, cautiously, and lawfully operate his motor vehicle.
29. Defendant ROBERT MCCHARGUE negligently and unlawfully breached the duties of care he owed to the public, pedestrians and to MARYANNE DEPETRIS by failing to operate his tractor-trailer in a safe manner.
30. As a direct and proximate result of Defendant ROBERT MCCHARGUE'S negligent and careless actions, MARYANNE DEPETRIS endured conscious pain and suffering; suffered severe, emotional distress and mental anguish; was otherwise prevented from transacting her business; incurred expenses for the care rendered by physicians, hospitals and other health care providers; sustained permanent and fatal injuries; and incurred medical, funeral and other expenses.

31. As a direct and proximate result of the negligence of the Defendant ROBERT MCCHARGE, the beneficiaries and next of kin of Decedent, MARYANNE DEPETRIS, suffered damages for the loss of enjoyment of life from the time of the accident until her death, loss of society, companionship, consortium, care, assistance, attention, protection, guidance, counsel, instruction, training and education over her life expectancy.

Count II

(*Respondeat Superior*- Defendant OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER # 1)

32. Plaintiffs fully reallege all of the above paragraphs as though fully rewritten herein.
33. At the time, Defendant ROBERT MCCHARGUE was working in the course and scope of his employment with, and/or as an agent of, Defendant OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER #1.
34. At the time of the accident described above, Defendants OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER #1 as the employer or principal was or were liable for the actions of Defendant ROBERT MCCHARGUE under the doctrine of *respondeat superior*.
35. As a direct and proximate result of Defendants' negligence and careless actions, MARYANNE DEPETRIS endured conscious pain and suffering; suffered severe, fatal injuries; incurred medical funeral and other expenses; and other damages.
36. As a direct and proximate result of the Defendants' negligent and careless actions, the beneficiaries and next of kin of Decedent, MARYANNE DEPETRIS, suffered damages for the loss of society, companionship, consortium, care, assistance, attention, protection, guidance, counsel, instruction, training and education over her life expectancy.

Count III

(Negligence- Defendant OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER # 1)

37. Plaintiffs fully reallege all of the above paragraphs as though fully rewritten herein.
38. At the time of the accident described above, Defendants OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER #1 was or were negligent in the selection, hiring, training, supervision and/or retention of Defendant ROBERT MCCHARGUE, and was or were otherwise negligent.
39. At the time of the accident described above, Defendants OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER #1 was or were negligent in the ownership, maintenance, servicing, inspection, and/or leasing of the tractor and/or trailer operated by Defendant ROBERT MCCHARGUE, in failing to otherwise safely equip the tractor-trailer with all necessary safety equipment.
40. The Defendant's negligence described above resulted in the wrongful death of MARYANNE DEPETRIS from which the Estate of MARYANNE DEPETRIS incurred medical, funeral, and burial expenses; and request survivorship damages, including conscious pain and suffering.

Count IV

(Negligent Infliction of Emotional Distress- All Defendants)

41. Plaintiffs fully reallege all of the above paragraphs as though fully rewritten herein.

42. Defendant ROBERT MCCHARGUE was negligent in the operation of his tractor-trailer when he stopped, blocking the crosswalk, then suddenly and without warning drove forward in his unit without having a clear and safe path of travel.
43. The negligence of Defendants, ROBERT MCCHARGUE, and/or, OLD DOMINION, and/or DOMINION and/or EASTERN SLEEP and/or SYMBOL and/or JOHN DOE EMPLOYER #1, as set forth above in detail, resulted in severe and debilitating mental disturbance to the husband of the deceased, Plaintiff RALPH DEPETRIS.
44. Plaintiff RALPH DEPETRIS has endured significant and overwhelming emotional distress by way of witnessing the death of his beloved wife and suffers with Major Depression, Post-Traumatic Stress Disorder and Grief as a direct and proximate result of Defendants' actions.
45. Defendant ROBERT MCCHARGUE caused emotional and/or psychological injury and/or he knew/should have known his acts could foreseeably result in serious emotional distress to the deceased's husband, RALPH DEPETRIS, who was sitting in his car watching and waiting for MARYANNE DEPETRIS to exit the store.
46. To this day, Plaintiff RALPH DEPETRIS suffers horrific flashbacks of the accident and his wife's injuries and death.
47. As a direct and proximate result of Defendants' negligent and careless actions, Plaintiff RALPH DEPETRIS suffered, and continues to suffer, severe emotional stress, and has incurred medical, hospital, and other charges, and will require future medical and psychological care as well, on a permanent basis.

COUNT V
(Survival/Wrongful Death Claims –Defendants)

48. Plaintiffs reallege the above paragraphs as though fully rewritten herein.

49. At the time of the December 1, 2011 accident, Defendants OLD DOMINION, and/or Defendant DOMINION and/or Defendant EASTERN SLEEP and/or Defendant SYMBOL and/or JOHN DOE EMPLOYER #1 employed the driver of the tractor-trailer, ROBERT MCCHARGUE, who negligently operated his vehicle, striking MARYANNE DEPETRIS.
50. As a direct and proximate result of Defendant OLD DOMINION'S, and/or Defendant DOMINION'S and/or Defendant EASTERN SLEEP'S and/or Defendant SYMBOL'S and/or JOHN DOE EMPLOYER #1'S employee ROBERT MCCHARGUE'S, negligent actions, set forth more fully above, Decedent incurred property damage, endured pre-impact fright and conscious pain and suffering, suffered severe, fatal injuries, and incurred medical, funeral, and other expenses and damages.
51. As a direct and proximate result of Defendant OLD DOMINION'S, and/or Defendant DOMINION'S and/or Defendant EASTERN SLEEP'S and/or Defendant SYMBOL'S and/or JOHN DOE EMPLOYER #1'S employee ROBERT MCCHARGUE'S negligent actions, MARYANNE DEPETRIS came to her death.
52. As a direct and proximate result of Defendant OLD DOMINION'S, and/or Defendant DOMINION'S and/or Defendant EASTERN SLEEP'S and/or Defendant SYMBOL'S and/or JOHN DOE EMPLOYER #1'S employee ROBERT MCCHARGUE'S negligent actions, Decedent's next of kin, Plaintiff REBECCA OLIVO APONTE, all other surviving beneficiaries and Plaintiff RALPH DEPETRIS, suffered the permanent loss of consortium and services of Decedent, incurred pecuniary damages including medical, funeral, and other expenses, and suffered mental anguish upon Decedent's death.

Count VI
(Punitive Damages- All Defendants)

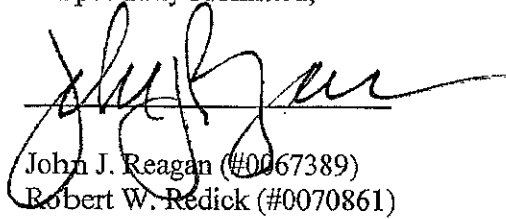
53. Plaintiffs fully reallege all of the above paragraphs as though fully rewritten herein.

54. The actions of each and all of the Defendants above on December 1, 2011 amounted to intentional, reckless, willful and wanton conduct, which demonstrated a conscious disregard for the rights and safety of others, including MARYANNE DEPETRIS.
55. The intentional, reckless, willful and wanton conduct of the Defendants described above resulted in medical and property damages and conscious pain and suffering of MARYANNE DEPETRIS.

WHEREFORE, the Plaintiffs REBECCA OLIVO APONTE and RALPH DEPETRIS each individually and as Executor of the Estate of MARYANNE DEPETRIS demand judgment against the Defendants as follows:

- a. compensatory damages for Plaintiffs, each in an amount in excess of twenty-five thousand dollars (\$25,000.00), but currently unspecified pursuant to Civil Rules 8(A) and 54(C), plus costs incurred in this action plus interest and attorney's fees;
- b. punitive damages for Plaintiffs, each in an amount in excess of twenty-five thousand dollars (\$25,000.00), but currently unspecified pursuant to Civil Rules 8(A) and 54(C), plus costs incurred in this action plus interest and attorney's fees;
- c. such other relief to which Plaintiffs may show themselves entitled, that the court deems proper, and that justice requires.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Reagan", is written over a horizontal line.

John J. Reagan (#0067389)

Robert W. Redick (#0070861)

Attorneys for Plaintiff

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Akron, OH 44333

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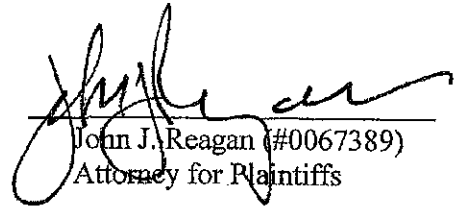
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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.



John J. Reagan (#0067389)
Attorney for Plaintiffs